IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELVTH DAY OF AUGUST

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE V.V.S.RAO

WRIT PETITION NO.34 OF 2000

Between:

1. Harinand Patwal, S/o.Fatehram Petwal

R/o. 8-3-221

2. Smt. P.Ekadashi Devi, W/o.Ramannd

R/o.8-3-217/D/10

3. Smt.Salma, W/o.Afaar Hussain,

R/o.8-3-217/A/10

4. Smt.Ahmedi Begum, W/o.Shaik Hussain

R/o.8-3-217/A/10

5. Smt.Shaheeda Begum, W/o.Ameeruddin

R/o.8-3-217/44

6. Smt.Naseen Banu, W/o.Musanjafullah Khan

R/o.8-3-217/A/4

7. Smt.Rehana Begum, W/o.Shafiullah Khan

R/o.8-3-217/A/4

8. Smt.Mehboob Bee, W/o.Faheemullah Khan

R/o.8-3-217/A/4

9. Smt.Khairunissa Begum, W/o.Abdul Waheed

R/o.8-3-217/A/4

10.Sajid Ahmed, S/o.Khader Hussain

R/o.8-3-218/A/3

11.Smt.Afsana Sultana, W/o.Ghulam Nayeemuddin

Teacher, R/o.8-3-217/A/1

12.G.Jameel, S/o.Ghulam Jilani

R/o.8-3-218/15

13.Smt.Rabia Bee, W/o.Shaik Mahboob, died per LR Ahmedi Begum

R/o.8-3-213/35

14.Smt.Afsari Begum, W/o.Ghulam Jilani

R/o.8-3-217/17

15.Smt.Mehrunnissa, W/o.Mehmood Hussain,

R/o.8-3-217/1

16.Smt.Areefunnisa Begum, W/o.Khaja Moinuddin

R/o.8-3-

17.Smt.Khurshid Begum, W/o.Ghazanfarullah Khan

R/o.8-3-217/A/5/5

18.Smt.Saheb Bee, W/o.Abdul Raheem

R/o.8-3-217/B-1

19.Smt.A.Vanitha, W/o.A.Purshottam

R/o.8-3-217/5/27

20. Smt.Sahanaz Begum, W/o.Majeed Khan

R/o.8-3-218/18

21. Smt.Malan Bai, W/o.Sudham

R/o.8-3-219/25

22.Smt.Ahmedi Qatoon, died per LR Siraj Ahmed

S/o.Khadir Hussain, R/o.8-3-218/15/1

23.Smt.Noorjahan Begum, W/o.Sadiq Ahmed

R/o.8-3-218/A3/11/1

24.Syed Fayaz Hussain, S/o.Ghulam Qadar Hussain,

R/o.8-3-218/11

25.Shaik Fareed, S/o.Late Shaik Meeram,

R/o.8-3-213/B5

26.Smt.Asiya Begum, W/o.Aijaj

R/o.8-3-218/18

27.Smt.Yousuf Bee, W/o.Liyaqatullah Khan

28.Smt.Abed Begum, W/o.Mohd. Pasha

R/o.8-3-217/B/2

29.Smt.Asgari Begum, W/o.Shaik Habeeb

R/o.8-3-217/B/1

30.Iqbal Ahmed, S/o.Fatha Mahmood,

R/o.8-3-218/18

31.Smt.Kousalya, W/o.Anjaiah

R/o.8-3-217

32.Smt.Kamalamma, W/o.Late Yellaiah,

R/o.8-3-327

33.Smt.Zaibunissa, W/o.Ibrahim

R/o.8-3-218/32

34.Smt.Yadamma, W/o.Kistaiah

R/o.8-3-218/17

35.P.R.Kalavathy, W/o.P.R.Ramakrishna

R/o.8-3-210/33

36.Ruth Bai, W/o.Rathnakar, died per LR P.R.Kalavathy

W/o.P.R.Ramakrishna, R/o.8-3-217/62

37.Qamer Ahmed, W/o.Fathe Mahmood

R/o.8-3-218/18

38.Zubeda Begum, W/o.Ghulam Mustafa

R/o.8-3-

39.Smt.Lalitha, W/o.Rathi Ram

at Sy.No.67 (old) T.S.No.70/ Part (New), Near Chaalis Makaan

Sreenivas Colony (West), Beside Sarathi Studio, Yousufguda

Hyderabad

…PETITIONERS

And

1. The Collector and District Magistrate

Hyderabad District, Nampally Station Road,

Hyderabad

2. Mandal Revenue Officer, Khairatabad Mandal, at Hyderabad

3. The District Level Committee, Hyderabad District,

rep. by Commissioner Land Revenue,

Office of the Commissioner of Land Revenue,

Nampally Station Road, Hyderabad.

4. The State of A.P., rep. by Secretary (Revenue Assgn.I), Department,

A.P., Hyderabad.

…RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings No.C2/3637/97, dt.14.12.1997 issued by the 1st respondent as illegal, arbitrary and against the principles of natural justice and consequently pleased to direct the respondents to dispose of the applications filed by the petitioners strictly as per the guidelines in G.O.Ms.No.508, dt.20.12.1995, by giving opportunity of personal hearing to the petitioners.

Counsel for the Petitioners: MR. VIJAY KUMAR HEROOR

Counsel for the Respondents: MR. G. MANOHAR, SPECIAL GOVERNMENT PLEADER, REPRESENTING ADVOCATE GENERAL

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.34 OF 2000

ORDER:

The thirty nine petitioners allege that they have occupied the land near Chaalis Makaan in Hyderabad and constructed small tin/asbestos sheds some time forty years ago. It is alleged that a colony by name, Sreenivas Colony has come up in the area. The land is comprised in S.No.67 of Yousufguda Village. Some of them got electricity connection, telephone connection and allegedly they are assessed to property tax by Municipal Corporation of Hyderabad (MCH). When they came to know that respondents 1 and 2 herein, namely, District Collector, Hyderabad and Mandal Revenue Officer, Khairatabad Mandal, are claiming the land as belonging to Government, they approached the District Collector to regularize their possession as per Government Order in G.O.Ms.No.508, dt.20.10.1995. They filed their application on 30.11.1995. The same was placed before the District Level Committee. After the matter was decided, first respondent by proceedings dt.14.12.1999 rejected the request of the petitioners for regularization of the land allegedly in their possession. Assailing the same, present Writ Petition is filed.

This Court while admitting the Writ Petition on 5.1.2000 passed interim order in W.P.M.P.No.38 of 2000. The respondents have moved this Court for vacating the interim order of stay that was granted on 5.1.2000. Through the learned Advocate General, the Mandal Revenue Officer has filed a counter affidavit in support of W.V.M.P.No.1982 of 2004. The interlocutory applications were called before me on 6.8.2004. As requested by both the learned counsel, the Writ Petition itself was heard finally and is being disposed of by this order.

In the counter affidavit the Mandal Revenue Officer stated as follows. The land in S.No.67 admeasuring about Ac.1.33 guntas is classified as Government poramboke since 1340 fasli. Military barracks were existing on the land prior to merger of State of Hyderabad with Indian Union. After the merger, the land in S.No.67 vested with the Government and was handed over to Public Works Department (PWD) in 1962 for public purpose, which in turn gave it to Institute of Mental Health Care. The

Health Department allowed their employees to stay in barracks on rental basis. As the land is earmarked for public purpose, the application of the petitioners for regularization was rejected by the Committee constituted under G.O.Ms.No.508 dt.20.10.1995 read with G.O.Ms.No.972, dt.4.12.1998. The allegation that the petitioners are in possession and enjoyment of the land for more than forty years is not correct and baseless and petitioners are residing in the houses un-authorisedly though they have retired from their services from Institute of Mental Health. The petitioners are trying to grab the Government land by showing house numbers, electricity connections and telephone connections.

It is also stated that some of the petitioners along with others initially filed a writ petition being W.P.No.12357 of 1988 seeking a direction to allot the land. The same was dismissed on 28.10.1994. Questioning the same, a writ appeal being W.A.No.57 of 1995 was filed and the same was dismissed on 17.7.1995. Some of the petitioners herein and others again filed a Writ Petition being W.P.No.30532 of 1997 which was dismissed by this Court on 30.7.1999. Aggrieved by the same, a writ appeal being W.A.No.1388 of 1999 was filed. The same was dismissed on 21.1.2002. This Court observed in the judgment that the petitioners are not entitled for allotment/grant of these quarters. The petitioners were allowed to say in barracks on payment of rent and therefore they are not entitled to regularization as per G.O.Ms.No.508, dt.20.10.1995. House site pattas were to be granted to persons belonging to weaker sections by accommodating them in the vacant land, but the land was earmarked for use of hospital, and patta holders are asked to accommodate in other colonies for people belonging to weaker sections.

A reply affidavit is filed by the petitioners denying the averment in the counter affidavit that it is not open land. According the petitioners, the buildings where petitioners are residing do not part of barracks and that they constructed small houses in the land adjacent to barracks.

Learned counsel for the petitioners, Sri Vijay Kumar Heroor, raised two contentions. He submits that the impugned order came to be passed by first respondent on mistaken facts, in that, when the petitioners are not staying in barracks, but staying in their house constructed in the open land adjacent to barracks, the District Level Committee as well as first respondent proceeded on the premise that petitioners wanted regularization of barracks. According to the learned counsel, the Writ Petitions filed by others in the past have nothing to do with the relief prayed by the petitioners herein in this Writ Petition. Secondly he would urge that the District Level Committee rejected the request of petitioners for regularization on the ground that the petitioners are not eligible for such regularization and that all of them are employees. If only notice had been given to petitioners, they would have participated in the enquiry. In the absence of any notice, the impugned order must be declared as void as violating principles of natural justice.

Learned Special Government Pleader, Sri G.Manohar, relied on various orders of this Court in earlier writ petitions as well as writ appeals in support of the submission that petitioners' case was already rejected holding that they have no right to seek regularization and therefore, the impugned order does not suffer from any infirmity.

The only point that arises for consideration is whether the impugned order does not does not suffer from illegality or impropriety ?

It is not denied before this Court that the Government issued G.O.Ms.No.508, dt.20.10.1995 with a view to regularize small extents of lands in the occupation of landless poor persons so as to mitigate the hardship faced by them if such regularization is not made. It is also not denied that the Government Orders are not intended to regularize land in occupation of Government employees and well to do people nor is intended to regularize occupation of those persons who are occupying Government quarters. It is also not denied that if any land under occupation of landless poor person is required for public purpose, the Government Order has no application. At least half of the petitioners herein initially filed Writ Petition No.12357 of 1988 praying this Court to regularize occupation of barracks. The same was dismissed. Aggrieved by the same the petitioners therein preferred Writ Appeal No.57 of 1995. A Division Bench of this Court by order dt.17.7.1995 directed the Secretary to Government in Health, Medical and Family Welfare Department to afford personal hearing to the occupants and pass appropriate orders. After doing so, the Government issued G.O.Rt.No.1708, dt.10.10.1996 and rejected the representation made by the occupants for allotting quarter located in the Government land known as Chaalis Makaan, adjacent to Institute of Mental Health. The Government in the said G.O. observed as under:

Government after careful consideration of the matter feel that the land is located in the heart of the city and is very valuable and is used as quarters of staff. Simply because it is given to subordinate staff on rent, they have no right to demand its allotment on a permanent basis. Government have provided various other methods of making land available to its employees. Employees Co-operative Housing Societies had been given lands. Government have also in the past few years allotted a huge chunk of land in Gachibowli, Ranga Reddy District on the outskirts of the city for allotment to various Non-Gazetted Officers including the N.G.Os of Health, Medical and Family Welfare Department. Government, therefore, order that it is not appropriate to give away the land to the employees particularly where quarters are located. The land is ideally situated for construction of modern quarters to provide adequate accommodation to more employees as the present constructions are old and dilapidated.

In the circumstances, the representation made by the occupants for allotting the quarter located in the Government land known as “Chalismakan” adjunct to the Institute of Mental Health, Hyderabad to the existing occupants is rejected.

Challenging G.O.Rt.No.1708, dt.10.10.1996 the aggrieved persons including most of the petitioners herein filed Writ PetitionNo.30632 of 1997. This Court dismissed the Writ Petition holding that the discretion is vested in the Government to regularize occupation and that in doing so, the Government has exercised its jurisdiction on sound lines warranting no interference. Aggrieved by the same, the petitioners therein filed Writ Appeal No.1388 of 1999. The Division Bench by judgment dt.21.1.2002 confirmed the orders and dismissed the Writ Petition observing that representation made by petitioners be considered. While the said Writ Appeal was

pending before this Court, petitioners approached the District Collector, first respondent herein whereupon the first respondent rejected for regularization by passing the impugned order dt.14.12.1999.

Whether the petitioners are occupants of barracks or petitioners are staying in huts constructed in the land adjacent to barracks, it makes no difference insofar as the Government is concerned. Indeed, as seen from G.O.Rt.No.1708, dt.10.10.1996, barracks and entire land appurtenant to barracks is Government land known as Chaalis Makaan. Whether the petitioners are occupiers of barracks or constructed houses in the land adjacent to barracks, the Collector informed them that as the land is required for public purpose, the same cannot be regularized. With the assistance of the learned Special Government Pleader I have seen the cause title and as many as seventeen petitioners herein are also petitioners before this Court in Writ Petition No.30532 of 1997 and in that view of the matter, it does not behoof well with the petitioners to change their stand from time to time. Further, as observed by the Government in G.O.Rt.No.1708, dt.10.10.1996, most of the occupants are Government employees and they have no right to demand allotment of quarters on permanent basis and that the Government does not consider it proper to give away the land to the employees who are already given land under different schemes. In the background of the above discussion, this Court does not find any infirmity or arbitrariness in exercise of discretion vested in first respondent.

The submission that for want of notice the impugned order is vitiated has no merit. Under G.O.Ms.No.508, dt.20.10.1995, power is conferred on the District Level Committee to consider application for regularization. The same does not contemplate issuing of notice before a claim is rejected for an encroacher or an occupant of government land has no enforceable right to seek regularization.

The Writ Petition is devoid of merit and is accordingly dismissed. The interim order stands vacated. No costs.

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(V.V.S.RAO, J)

12.8.2004

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To

1. The Collector and District Magistrate

Hyderabad District, Nampally Station Road,

Hyderabad

2. Mandal Revenue Officer, Khairatabad Mandal,

Khairatabad, Hyderabad

3. The Commissioner, Land Revenue,

Office of the Commissioner of Land Revenue,

Nampally Station Road, Hyderabad.

4. The Secretary to Government of Andhra Pradesh

Revenue (Assgn.I), Department,

Secretariat, Hyderabad.

5. 2 CCs to the Advocate General, High Court Bldgs., Hyderabad (OUT)

6. 2 CD copies